IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

OP.No. 28329 of 2001(V)

PETITIONER:

K.PREMACHANDRAN NAIR,
ARMED POLICE SUB INSPECTOR,
SPECIAL ARMED POLICE,
PANDIKKAD, MALAPPURAM DISTRICT.

BY ADV. SRI.B.RAGUNATHAN
SRI.V.V.MATHEW
SRI.G.GOPALAKRISHNA PILLAI

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, HOME DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM – 695 001.**

2. **DEPUTY INSPECTOR GENERAL OF POLICE, ARMED POLICE BATTALIAN, THIRUVANANTHAPURAM.**

3. **COMMANDANT, SPECIAL ARMED POLICE, THIRUVANANTHAPURAM.**

4. **SUPERINTENDENTOF POLICE, RAILWAYS, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI. K.V. MANOJ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.46029/2001 IN O.P.NO.283292001 V

DISMISSED

7/06/2007 **SD/- T.R.RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF ORDER NO.H1-11472/84/S1 DTD. 23/01/85 OF THE 3RD RESPONDENT.**

EXT.P2: **COPY OF ORDER NO.A2.8735/AP/85 DTD. 27/02/86 OF THE 2ND RESPONDENT.**

EXT.P3: **COPY OF G.O.(RT) NO.5043/87/HOME DTD. 31/12/87.**

EXT.P4: **COPY OF SHOW CAUSE NOTICE NO.15329/H1/95/HOME DTD. 9/05/95.**

EXT.P5: **COPY OF EXPLANATION DTD. 2/11/95 SUBMTTED BY THE PETITIONER.**

EXT.P6: **COPY OF G.O.(RT) NO.2753/96/HOME DTD. 2/09/96.**

EXT.P7: **COPY OF ORDER NO.H1 5465/85/Q DTD. 2/2/85 OF THE SUPERINTENDENT OF POLICE, KOLLAM.**

EXT.P8; **COPY OF ORDER NO.H2 20973/94/Q DTD. 14/01/95 OF THE SUPERINTENDENT OF POLICE, KOLLAM.**

/TRUE COPY/

KSS

T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 28329 of 2001-V.

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Dated this the 7th day of June, 2007.

J U D G M E N T

The petitioner has approached this Court seeking to quash Ext.P6 and to issue appropriate direction to the respondent to treat the off duty period of the petitioner from 1-2-1985 to 31-1-1988 as duty with all attendant benefits for seniority, promotion, salary etc. The short facts of the case are as follows.

2. The petitioner while working as Havildar under the third respondent was ordered to be dismissed from service as per Ext.P1, for commission of certain alleged misconduct. Apart from the petitioner, five others were also dismissed for the said misconduct. He filed an appeal against Ext.P1 to the second respondent and it was dismissed as per Ext.P2. Thereafter he filed a review petition to the first respondent which was allowed as per Ext.P3, by modifying the order of punishment from dismissal from service to that of reduction by two stages in the time scale of pay for two years. Consequently he was reinstated in service on 31-1-1988.

3. There were further proceedings taken concerning the regularisation of off duty period between 1-2-1985 to 31-1-1988. These

proceedings were initiated by show cause notice Ext.P4 wherein he was informed to the provisional decision to regularise the out of service period as duty for the limited purpose of pension and gratuity. The petitioner submitted a reply Ext.P5 wherein he had pointed out that other persons who were involved have been treated differently than the petitioner. By Ext.P6 order the proceedings were finalised confirming the provisional decision, which is under challenge in this original petition.

4. The petitioner contends that along with the petitioner five others were charge sheeted for the very same incident and offence and against all these Police Constables an enquiry was conducted. All of them were ordered to be dismissed from service after finding them guilty. But in respect of some of them the dismissal orders were cancelled and they were reinstated in service within no time. He alone was kept out of service without any rhyme or reason. The petitioner specifically points out the case of one Mr.Aravindakshan Nair who was dismissed along with him and was given regularisation of the period spent out of service as duty with all attendant benefits. The said fact is evidenced by Ext.P8 proceedings.

5. In the counter-affidavit filed by the first respondent the action taken in respect of the petitioner is sought to be justified. But no discernible reasons have been pointed out as to why the petitioner alone was treated

differently. The averment of the petitioner relying upon Ext.P8 is not denied also. In para.7 the existence of Ext.P8 was admitted. Therefore, it is a clear case where the petitioner alone was singled out differently even though misconduct was similar in respect of all the six Constables resulting in discrimination.

6. The provisions under which the orders have been passed is clearly by invoking Rule 56, Part I of the Kerala Service Rules. It is true that the above provisions give ample power to the Government to take appropriate action considering the question whether the officer is fully exonerated or not. In the case of the petitioner the above rule is applied. But it may be noted herein that in respect of other Constables particularly in the case of Mr.Aravindakshan Nair all the benefits were given ie. seniority, promotion, salary etc. Even in the counter-affidavit no justification is pointed out as to why the said benefits were not given to the petitioner. Therefore, it is a case where the petitioner has been discriminated without any justification and the action is arbitrary. Therefore, Ext.P6 is quashed and it is declared that the period from 1-2-1985 to 31-1-1988 (the off duty period) will be treated as duty for the purpose of seniority and promotion as well as for salary. But since going by Rule 56 it is for the Government to take a decision as regards the payment of full salary as the petitioner was not fully exonerated, the same will

be taken in accordance with law. Since the matter had been pending for a long period and as the petitioner has already retired from service, I direct the first respondent to take a decision as directed above within a period of four months from the date of receipt of a copy of this judgment and pay the consequential benefits to the petitioner, accordingly.

The Original Petition is allowed as above.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-